

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

FEDERAL TRADE COMMISSION,
STATE OF NEW YORK, STATE OF
CONNECTICUT, COMMONWEALTH OF
PENNSYLVANIA, STATE OF DELAWARE,
STATE OF MAINE, STATE OF MARYLAND,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA, STATE
OF NEW HAMPSHIRE, STATE OF NEW
JERSEY, STATE OF NEW MEXICO, STATE
OF OKLAHOMA, STATE OF OREGON,
STATE OF RHODE ISLAND, and STATE OF
WISCONSIN,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495

NOTICE OF RELATED CASES

Pursuant to Local Civil Rule 3(g)(1), Plaintiffs Federal Trade Commission (“FTC”) and states of New York, Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, and Wisconsin submit this notice of the following related cases: *Frame-Wilson v. Amazon.com, Inc.*, No. 2:20-cv-00424 (W.D. Wash.) (“*Frame-Wilson*”); *De Coster v.*

NOTICE OF RELATED CASES - 1
CASE NO. 2:23-CV-01495

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1 *Amazon.com, Inc.*, No. 2:21-cv-00693 (W.D. Wash.) (“*De Coster*”); and *Hogan v. Amazon.com,*
 2 *Inc.*, No. 2:21-cv-00996 (W.D. Wash.) (“*Hogan*”) (together, the “Related Cases”). Judge
 3 Ricardo S. Martinez currently presides over each of the Related Cases.

4 *Frame-Wilson* is a putative class action brought on behalf of “[a]ll persons who, on or
 5 after March 19, 2016, purchased through any other retail e-commerce channel in the United
 6 States other than Amazon Marketplace one or more products concurrently offered for sale by
 7 Amazon’s third-party sellers on Amazon Marketplace.” Second Amended Class Action
 8 Complaint, *Frame-Wilson v. Amazon.com, Inc.*, No. 2:20-cv-00424 (W.D. Wash. Apr. 11, 2022),
 9 Dkt. #55 at 94-95. The *Frame-Wilson* plaintiffs bring antitrust claims for violations of Section 1
 10 and Section 2 of the Sherman Act as well as California’s Cartwright Act, alleging that Amazon
 11 “regularly monitors retail e-commerce prices offered to U.S. customers both by its external
 12 competitors and its third-party sellers,” *id.* at 66, and “penalize[s] sellers that offer products at a
 13 lower price on competing sites” such that “sellers either raise their prices on other websites or
 14 lose selling privileges on Amazon Marketplace,” *id.* at 11-12. The *Frame-Wilson* plaintiffs
 15 allege that Amazon’s conduct has the effect of “reducing online competition and increasing
 16 online retail prices.” *Id.* at 50.

17 *De Coster* is a putative class action brought on behalf of “[a]ll persons who on or after
 18 May 26, 2017, purchased one or more goods on Amazon’s marketplace.” Consolidated
 19 Amended Complaint, *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-00693 (W.D. Wash. July 21,
 20 2021), Dkt. #20 at 50. The *De Coster* plaintiffs bring antitrust claims for violations of Section 1
 21 and Section 2 of the Sherman Act, alleging that Amazon’s pricing policies “prohibit third-party
 22 merchants from lowering their prices anywhere on the internet” and “neutralize competition by
 23 other online retail marketplaces.” *Id.* at 12. The parties in *Frame-Wilson* and *De Coster* have
 24 “agreed to general cross-use as between *Frame-Wilson* and *De Coster*—discovery served or

1 produced in one case is available for use in the other, with all parties reserving all objections as
2 to admissibility of the discovery material in the litigation.” Stipulated Motion and Order
3 Regarding Discovery, *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-00693 (W.D. Wash. May 18,
4 2023), Dkt. # 90 at 2.

5 Like the *Frame-Wilson* and *De Coster* plaintiffs, Plaintiffs allege that Amazon denies
6 shoppers lower prices both on and off Amazon by punishing sellers who offer lower prices off
7 Amazon. *See, e.g.*, Compl., Dkt. #1 at 83-87. However, Plaintiffs here challenge that conduct
8 under Section 5 of the FTC Act, Section 2 of the Sherman Act, and numerous state laws not at
9 issue in *Frame-Wilson* or *De Coster*. Plaintiffs also challenge Amazon conduct that is not at
10 issue in *Frame-Wilson* or *De Coster*, under both federal and state laws.

11 *Hogan* is a putative class action brought on behalf of “[a]ll persons who, while residing in
12 the United States, purchased an item during the Relevant Period through Amazon’s Buy Box,
13 and the order was then shipped (or ‘fulfilled’) by Amazon.” Second Amended Class Action
14 Complaint, *Hogan v. Amazon.com, Inc.*, No. 2:21-cv-00996 (W.D. Wash. June 21, 2023), Dkt.
15 #44 at 58-59. The *Hogan* plaintiffs bring antitrust claims for violations of Section 1 and
16 Section 2 of the Sherman Act, alleging that Amazon “conditioned a Seller’s access to the Prime
17 Badge—and with it, placement in the Buy Box—on a Seller’s using Fulfillment by Amazon,”
18 which results in shoppers “pay[ing] higher prices when shopping on Amazon.com than they
19 would but for Amazon’s unlawful conduct.” *Id.* at 12-13.

20 Plaintiffs in this case allege that Amazon coerces sellers into using Amazon’s fulfillment
21 service, depriving competitors of scale and constraining rivals’ ability to compete on price and
22 product selection. *See, e.g.*, Compl., Dkt. #1 at 102-117. However, Plaintiffs here challenge that
23 conduct under Section 5 of the FTC Act, Section 2 of the Sherman Act, and numerous state laws
24

not at issue in *Hogan*. Plaintiffs also challenge Amazon conduct that is not at issue in *Hogan*, under both federal and state laws.

Plaintiffs' case differs from and is broader than the Related Cases. However, Plaintiffs' case involves certain overlapping factual and legal issues with each of the Related Cases. Plaintiffs' case and the Related Cases address some of the same conduct engaged in by Amazon, and Plaintiffs' case and the Related Cases concern many of the same transactions and events, including purchases made on Amazon's online store and certain of the restrictions Amazon imposes on sellers. Accordingly, it is "likely that there will be an unduly burdensome duplication of labor and expense or the potential for conflicting results if the cases are conducted before different judges." Local Rules W.D. Wash. LCR 3(g)(4).

Dated: September 26, 2023

Respectfully submitted,

s/ Susan A. Musser

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I certify that this memorandum contains 833 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I, Susan A. Musser, certify that on September 26, 2023, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system. Additionally, today I effectuated service of the same by email on Kevin M. Hodges, counsel for the Defendant. I understand that Defendant's counsel has consented to service in this manner. A copy of this Motion will also be personally delivered today to Kevin Hodges, counsel for Defendant, at Williams & Connolly LLP, 680 Maine Ave SW, Washington, DC 20024.

s/ Susan A. Musser

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